

26



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,502	08/22/2001	Philipp G. Kornreich	270_094CIPofNP	8052

20874 7590 01/23/2004

WALL MARJAMA & BILINSKI
101 SOUTH SALINA STREET
SUITE 400
SYRACUSE, NY 13202

EXAMINER

HOFFMANN, JOHN M

ART UNIT	PAPER NUMBER
----------	--------------

1731

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,502

Applicant(s)

KORNREICH ET AL.

Examiner

John Hoffmann

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1: it is unclear what is meant by the glasses having an overlapping glass range. Specifically it is unclear what this range overlaps with? Or does it mean that the two glasses have ranges which overlap with each other? Or does it mean that each of the two glasses have their own range, and that their overlap creates a third range?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1- 2132 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard 4428761.

The invention is disclosed at col. 1, lines 6-50; col. 7, lines 21-26, 40-45 and col. 6, line 42. Howard does not disclose the temperature and flow ranges. However, the

Howard substrate tube is quartz. Applicant's invention also uses quartz (i.e. pure fused silica (see col. 11, lines 1-9).

It is inherent that the cladding 10 and the core 22 and/or 24 would have overlapping flow ranges, because both must be drawn to form the fiber simultaneously. Therefore they would have the same temperature (T) when they are drawn. Therefore the flow range of each will overlap at least at the actual draw temperature. It is inherent that the glasses would also flow at a temperature of T+1 and T+2 because the glasses would still be liquid. Thus the range T+1 to T+2 is an overlapping flow range. The Howard metal clearly flows at T: T is a flow point which is below the T+1 to T+2 range.

Furthermore, page 4, lines 29-30 of Applicant's specification state that the material "must have a flow point which lies below the flow range for the glass. " A complete reading of that paragraph indicates that such is necessary for having a continuous and coherent material. It is clear that Howard's metal is continuous, thus the method must have had a flow point that is below the flow range for the glass. Also, lines 5-15 of that page identify how the process fails if the proper plaso-viscosity properties are not met. Since the Howard process works and does the same thing that Applicant does, the Howard inherently has to meet the current flow limitations. The teachings of the present specification appear to spell out what is required to make the fiber - there is no indication that the present invention results in an improved method.

Claims 2-4 are clearly met.

Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Krol 5838868.

Figures 6-7, Col. 3, lines 15-63 disclose the invention except for the temperature limitations. Krol does everything that Applicant does and gets the same results, therefore the temperature limitations are inherently met. As discussed above (and by Applicant) the plas -viscosity limitations "must" be met to make and use the invention. Therefore Krol must have met the limitations to make the Krol fiber.

Allowable Subject Matter

Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

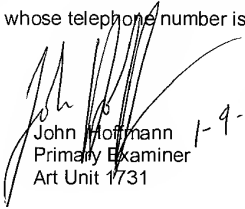
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fujitsu is cited as being relevant to the present disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is (571) 272-1191. The examiner can normally be reached on Monday through Friday, 7:00- 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1700.



John Hoffmann
Primary Examiner
Art Unit 1731

1-9-04

jmh